*** THE HON'BLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION No.24638 of 1998

%Dated 29th day of August, 2007

Regional Manager, Golconda Region,
A.P.S.R.T.C.,Mushirabad, Hyderbaad and two others.

…. PETITIONERS

VERSUS

$ Mohd.Tajuddin and another.

.....RESPONDENTS

@ Counsel for Petitioner: Sri V.T.M. Prasad, Standing Counsel

^ Counsel for Respondents: Sri C. Raghu for Mr. C. Nageswara Rao

< GIST:

> HEAD NOTE:

? Cases referred:

1. (2004)8 SCC 200
2. (1999) 3 SCC 679
3. (1996) 6 SCC 417
4. (2005) 3 SCC 331
5. (1973) 2 SCC 502
6. (2005) 3 SCC 401

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.24638 of 1998

Dated: 29-08-2007

Between:

Regional Manager,Golconda Region,
APSRTC, Mushirabad, Hyderabad and two others.

.... PETITIONERS

AND

Mohd.Tajuddin and another.

.... RESPONDENTS

HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.24638 of 1998

ORAL ORDER:

Heard Sri V.T.M. Prasad for the petitioners and Sri C. Raghu representing Mr. C. Nageswara Rao, learned counsel for the respondent-workman.

This writ petition by the A.P. State Road Transport Corporation is directed against the Award of the Labour Court-II, Hyderabad, dated 3.2.1997 in I.D. No. 23 of 1995.

The 1st respondent workman was a driver employed with the petitioner-Corporation. While the 1st respondent was driving the bus of the

Corporation on 26.1.1985 at about 3.00 p.m., an accident occurred. One individual died as a consequence, and a few were injured. The petitioner was prosecuted for rash and negligent driving under Section 304-A of I.P.C., but was acquitted of the charge on the ground that the evidence on record did not establish the charge beyond reasonable doubt. The legal representatives of the deceased filed an application for compensation before the Motor Vehicles Accidents Claims Tribunal, Warangal, which is stated to have been allowed in part granting some compensation to the claimants.

Prior to the acquittal, a departmental enquiry was initiated. After a due process of enquiry, the Corporation by the proceedings dated 16.10.1995 inflicted on the workman the punishment of removal from service. On acquittal of the criminal charge, the workman laid a claim under Section 2-A(2) of the Industrial Disputes Act. This claim came to be considered as I.D. No. 23 of 1995. The workman assailed the order of removal on several grounds including that the departmental enquiry was incompetent on account of his acquittal. It is, however, apparent from the record that the petitioner did not impeach the validity of the departmental proceedings on procedural grounds. He, however, impeached the conclusion of his guilt on merits. The Labour Court on an analysis of the record, concurred with the conclusion in the departmental enquiry that the petitioner was guilty as charged and that the workman's explanation was rightly rejected in the departmental enquiry. The Labour Court held that the findings of the departmental enquiry are sustainable. The Labour Court, however, interfered with the punishment of removal imposed in the departmental proceedings and modified it to one directing reinstatement of the workman into service with all consequential benefits such as continuity of service, but, without back wages.

It requires to be recorded that the Award of the Labour Court on the aspect of the proportionality of the punishment inflicted in the departmental proceedings is wholly bereft of any reasons. The Labour Court recorded the following while interfering with the quantum of punishment.

> "However, by taking into consideration the totality of the facts and circumstances this Court is satisfied that the punishment of removal is too excessive disproportionate and not commensurate with the gravity of the charge and it is liable to be set aside. Thus the point is found accordingly in favour of the petitioner.
>
> In the result, the I.D. petition is allowed setting aside the impugned removal orders passed by the Respondent No.3 dt. 16.11.85 and also declaring as invalid and illegal orders passed by the 1st & 2nd respondents while directing the Respondents to reinstate the petitioner into service with all benefits like continuity of service etc., but, without any backwages under the given set of circumstances. The award is passed accordingly."

It also requires to be noticed that while the employer has filed the writ petition, the workman has not challenged the conclusions of the Labour Court concurring with the finding of guilt arrived at in the departmental proceedings. Thus, the conclusions in the departmental proceedings as affirmed by the Labour Court have become final.

Sri C.Raghu, the learned counsel for the 1st respondent would strenuously contend that as the workman was exonerated of the criminal charge of rash and negligent driving under Section 304-A of I.P.C., that fact must be considered as having fertilized the available discretion of the Labour Court in assessing the proportionality of the workman's guilt qua the punishment of removal. The learned counsel would contend that when the workman was exonerated of the criminal charge, the condign punishment of removal from service was rightly held to be disproportionate to the workman's

conduct.

It is also contended that in a charge of rash and negligent driving, there is no mental element involved and that as the event is the product of an accident, since no mens rea to achieve the results or consequences of the accident are present, the capital punishment of removal from service would be disproportionate to the charge of such mis-conduct.

The above contentions do not commend acceptance by this Court. The petitioner is an instrumentality of the State pursuing the activity of running a large number of buses and other heavy vehicles across the State. It employs thousands of drivers to man those buses. It has by regulations prohibited rash and negligent driving by its drivers as a component of its obligations integral to its business operations apart from its status as an instrumentality of the State and in the interest of public safety. A driver, which the workman was with the petitioner-Corporation, in such circumstances, is required to exercise the necessary standard of care. A fall in the requisite standard of care has disastrous consequence for public safety. Even in the case on hand, it is the admitted factual scenario that a valuable life was nipped in the bud prematurely and in a gruesome manner. This consequence of extinction of valuable life was the product of the absence of the requisite standard of care that is required by a driver, an employee of the petitioner-Corporation. Such conduct cannot be considered to be a minor mis-conduct. The facts and circumstances resulted in the departmental enquiry finding the petitioner guilty of rash and negligent conduct. This conclusion in the departmental enquiry has been affirmed by the Labour Court finally without an appeal by the workman. This conclusive and concurrent finding of rash and negligent conduct by the workman, which has resulted in the death of an

innocent member of the public is a conduct that is grave and rationally warrants a serious punishment. On such analysis, the punishment of removal cannot be held to be perverse, irrational or disproportionate.

I n ***KRISHNAKALI TEA ESTATE V. AKHIL BHARATIYA CHAH MAZDOOR SANGH*** ([1]), the Supreme Court considered the very issue whether the acquittal of the workman by the criminal court was relevant to consider the proportionality of the punishment inflicted in departmental inquiry. The Supreme Court, in this case, noticed that the acquittal was on the ground that the prosecution totally failed to prove the charges against the workman. Repelling the contention urged on behalf of the workman (placing reliance on the judgment in ***CAPT. M. PAUL ANTHONY V. BHARAT GOLD MINES LTD*** ([2])), the Supreme Court held that the decision in Paul Anthony affords no assistance. The Supreme Court held (para 26 of the SCC report) that before the Labour Court, the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and Labour Court were also different and, therefore, it was open to the Labour Court to have given an independent conclusion ***de hors*** the findings of the criminal Court. Relying upon the earlier judgment in ***STATE OF RAJASTHAN V. B.K. MEENA*** ([3]), the Supreme Court held that the approach and objective in criminal proceedings and disciplinary proceedings being altogether distinct and different with different standards of proof applicable as well as the modes of inquiry and the rules governing inquiry being distinct, the mere fact of acquittal by the criminal court is not conclusive or binding in a departmental inquiry. In para 29, the Supreme Court pointed out that the relevant criterion is whether the

punishment is disproportionate to the misconduct proved against the workman in the departmental inquiry. As the charges against the workman, which were established rightly in the departmental inquiry, were grave charges; the punishment of dismissal was valid and sustainable, held the Supreme Court.

In ***MURIADIH COLLIERY V. BIHAR COLLIERY KAMGAR UNION*** ([4]), the Supreme Court reiterated the established principle that under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court or Industrial Tribunal has jurisdiction to interfere with the punishment awarded in domestic inquiry only for good and valid reasons. In all such cases, the Tribunal should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. The Supreme Court reiterated the observations in ***TOURNAMULLA ESTATE V. WORKMEN*** ([5]), wherein the Apex Court had observed that if a workman was guilty of a serious misconduct such as; acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which, though not directly causing damage, is conducive to grave indiscipline, then, his gratuity can be forfeited even in its entirety.

The jurisdiction of the Labour Court in the matter of proportionality was again considered by the Supreme Court in ***M.P. ELECTRICITY BOARD V. JAGDISH CHANDRA SHARMA*** ([6]). The following observations as have been recorded in this case at para 8 are apposite:

> **The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or**

so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorized absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution of India only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In U.P. State Road Transport Corpn. v. Subhash Chandra Sharma (2000) 3 SCC 324, this Court, after referring to the scope of interference with punishment under Section 11A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh (2004) 8 SCC 200, this Court after referring to the decision in State of Rajasthan v. B.K. Meena (1996) 6 SCC 417, also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In Bharat Forge Company Ltd. v. Uttam Manohar Nakate, 2005(2) SCC 489, this Court again reiterated that the jurisdiction to interfere with the punishment

should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in Mahindra and Mahindra Ltd. v. N.B. Narawade, 2005(3) SCC 134. This Court summed up the position thus: (SCC p.141, para 20)

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

It may also be noticed that in Orissa Cement Ltd. v. Adikanda Sahu (1960(1) LLJ-518-SC) and in New Shorrock Mills v. Maheshbhai T. Rao, (1996) 6 SCC 590, this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated 'punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in Muriadih Colliery, M/s. BCCL

Ltd. v. Bihar Colliery Kamgar Union (2005 (3) SCC 331). This Court after referring to and quoting the relevant passages from Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh (1973 (2) SCC 502 held: (SCC p.336, para 17)

> **"The courts below by condoning an act of physical violence have undermined the discipline in the organization, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11(A) of the Act to interfere with the punishment of dismissal."**

In the light of the principles culled out from the judgments of the Supreme Court, the contention of the workman that the penalty imposed on him is disproportionate, does not commend acceptance.

It is alternately contended by the learned counsel for the respondent-workman that acquittal is a factor that ought to be taken into consideration in assessing the proportionality of punishment. On jurisprudential and normative fundamentals, this contention does not commend acceptance. Acquittal may be a relevant factor for considering the validity or the competence of conducting a departmental enquiry, but, once a departmental enquiry is unimpeachably conducted and its conclusions are not assailable, for reasons similar to the case on hand, acquittal cannot be a relevant factor in assessing the proportionality. To illustrate, if a person is prosecuted for embezzlement or misappropriation of employer's funds and is acquitted of such criminal charge and in respect of the same event or circumstance, a departmental enquiry is validly conducted and the employee is found guilty under the departmental enquiry standards of proof, on the preponderance of probabilities, the misconduct would still be misappropriation of employer's funds, a grave mis-conduct which cannot be visited with a minor penalty, for

that would result in mal-administration of public welfare. The issue whether the punishment inflicted is disproportionate to the mis-conduct alleged and proved is an issue for which the relevant criteria is the nature of the mis-conduct which is alleged and established. That in a different proceeding such as criminal proceedings, involving application of a different standard of proof, the charged public servant is exonerated/acquitted cannot be a relevant criteria. Such a principle would be distortion of the normative principles of law.

Learned counsel for the respondent-workman relied on the decision of the Supreme Court in G.M. TANK vs. STATE OF GUJARAT & OTHERS ([7]), in support of his contention that the acquittal of the workman in the criminal case was a relevant criteria to asses the proportionality of the punishment of removal inflicted on him.

In **Tanks**' case-supra, the relevant facts were that the appellant was proceeded against departmentally for accumulating assets disproportionate to his known sources of income and in the departmental enquiry, was found guilty of the charge and visited with the penalty of dismissal from service. He canvassed the correctness of the order of dismissal unsuccessfully before the High Court. He was also prosecuted under the Prevention of Corruption Act, 1947. It was inter alia contended before the Supreme Court that the findings of guilt arrived at in the departmental enquiry as affirmed by the High Court was erroneous. There was no evidence at all to sustain the conclusion of guilt in the departmental enquiry. It was alternately contended that having regard to the appellant's acquittal by the Criminal Court of the charge under the Prevention of Corruption Act, 1947 and the acquittal being clean and not on a benefit of doubt or on technical grounds and having regard to the identity

of evidence martialled before the Criminal Court and before the departmental enquiry and the identity of the charge and the circumstances, the finding of guilt recorded in the departmental proceedings was incompetent. It is in this factual context that the Supreme Court held (in paragraph-32 of the judgment, on which strenuous reliance is placed by the learned counsel for the workman herein) as under:

> "In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction, which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case(supra) (1999 AIR SCW 1098) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

It requires to be noticed that the application before the Supreme Court was by a workman who had been dismissed from service on a charge of having assets disproportionate to known sources of income. In the said case the Criminal Court on an identical charge and on identical evidentiary parameters found no evidence to bring home the guilt to the appellant. As analysed by the Supreme Court, it was not a case of acquittal on benefit of doubt, but a clean acquittal on the ground that there was no evidence to support the charge. Relying on earlier precedents and taking into consideration the facts and circumstances of that case, the Supreme Court held that though the finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal,

the same requires to be taken note of and the decision in Paul Anthony's case supra will apply.

This observation of the Supreme court does not enunciate a ratio that where a departmental enquiry is validly held, though the a circumstances, events or evidence in departmental enquiry and in criminal trial are substantially similar, the acquittal of the criminal charge should invariably direct the discretion of the departmental authority as to what punishment is proportionate and oblivious to the gravity of the charge of misconduct.

As analysed supra, the only issue which is relevant to an assessment of proportionality is the nature of the mis-conduct alleged and found. If the mis-conduct is grave and the punishment is proportionate to such mis-conduct, the fact that on a similar charge the criminal Court had acquitted some officer on application of a different standard of proof, would not be a relevant factor to guide the discretion of the disciplinary authority.

For the aforesaid reasons, the order impugned dated in I.D. No.23 of 1995 of the Labour Court-II, Hyderabad, is unsustainable and is accordingly set aside.

The writ petition is allowed. There shall be no order as to costs.

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GODA RAGHURAM,J

Date: 29th August, 2007

Note: **L.R. Copy be marked.**
Pnb/cvm

[1] . (2004) 8 SCC 200

[2] . (1999) 3 SCC 679

[3] . (1996) 6 SCC 417

[4] . (2005) 3 SCC 331

[5] . (1973) 2 SCC 502

[6] . (2005) 3 SCC 401

[7] AIR 2006 SC 2129